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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,327	06/27/2001	James T. Cole	GRI-99-007	2040

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07/30/2003

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EXAMINER

PRICE, CARL D

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/893,327

Applicant(s)

COLE ET AL.

Examiner

CARL D. PRICE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

Applicant's election of the specie directed to the use of reversible blowers (**Claims 9-16**) in **Paper No. 8** is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election **without** traverse (MPEP § 818.03(a)).

Claims 1-8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected specie, there being no allowable generic or linking claim. Election was made **without** traverse in **Paper No. 8**.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 9,10 and 16: rejected under 35 U.S.C. 102(b)

Claims 9,10 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Wheeler.

In regard to claims 9 and 10, Wheeler shows and discloses a baking oven including two reversible blowers (18,20) mounted in a blower plenum for creating multiple flow patterns during a baking cycle.

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Claims 9,10,12 and 16: rejected under 35 U.S.C. 102(b)

Claims 9,10,12 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Meisser et al.

In regard to claims 9,10,12 and 16, Meisser et al. show and disclose a heated oven including two reversible blowers (24a, 24b) mounted in a blower plenum (35) for creating multiple flow patterns during a heating cycle. The blowers can circulate heated air in the same or opposite directions (see column 9, line 54 – column 10, line 45).

The term “cooking”, and the phrase “during a baking cycle”, are deemed to be statements of intended use which fail to further limit the scope of the claimed invention. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 11: rejected under 35 U.S.C. 103(a)

Claim 11 is rejected under 35 U.S.C. 103(a) as being obvious over Meisser in view of Cook (U.S. Patent No. - 3659352) .

Meisser et al. show and disclose a heated oven including two reversible blowers (24a, 24b) mounted in a blower plenum (35) for creating multiple flow patterns during a heating cycle. The blowers can circulate heated air in the same or opposite directions (see column 9, line 54 – column 10, line 45). However, Meisser et al does not disclose the reversible blower wheels capable of operating at different speeds.

Cook '352 teaches, from the same convection oven field of endeavor as Meisser et al., controlling both the direction and speed of blowers, for the purpose of control the degree of transfer of heat from the heater elements to the air.

In regard to claim 11, for the purpose of modifying the flow of air passing over the heater elements, to thereby control the transfer of heat from the heater elements to the air flow, it would

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have been obvious to a person having ordinary skill in the art to regulate both the speed and direction of the blowers, in view of the teaching of Cook '352.

The term "cooking", and the phrase "during a baking cycle", are deemed to be statements of intended use which fail to further limit the scope of the claimed invention. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claim 13: rejected under 35 U.S.C. 103(a)

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB '177 (GB 2215177) in view of Cook (U.S. Patent No. – Re. 28226).

GB '177 shows and discloses a heated convection cooking oven including a reversible blower (15) mounted in a blower plenum adjacent a heat exchange tube (4) communicating with a blower header (5) for creating multiple flow patterns during a heating cycle. However, GB '177 does not disclose a moveable valve in the inducer.

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Cook '226 teaches, from the same convection heater field of endeavor as GB '177, providing a valve (41,61) in the inducer (39,40,59,66) to control gases exiting the oven space.

In regard to claim 13, for the purpose of controlling gases exiting the oven space, it would have been obvious to a person having ordinary skill in the art to modify the inducer (15,5) of GB '177 to include a valve, in view of the teaching of Cook '226.

Claim 14: rejected under 35 U.S.C. 103(a)

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB '177 in view of Cook '226, as applied to claim 13 above, and further in view of Wheeler.

GB '177 shows and discloses a heated convection cooking oven including a reversible blower (15) mounted in a blower plenum adjacent a heat exchange tube (4) communicating with a blower header (5) for creating multiple flow patterns during a heating cycle. However, GB '177 does not disclose the use of two reversible blowers for circulating the air in the oven in various flow patterns.

Wheeler teaches, from the same convection oven field of endeavor as GB '177, providing a baking oven with two reversible blowers (18,20) mounted in a blower plenum for creating multiple flow patterns during a baking cycle.

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In regard to claim 14, for the purpose of creating multiple flow patterns during a baking cycle, it would have been obvious to a person having ordinary skill in the art to modify GB '177 to include two reversible blowers, in view of the teaching of Wheeler.

Claim 15: rejected under 35 U.S.C. 103(a)

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB '177 in view of Cook '226, as applied to claim 13 above, and further in view of Murray.

GB '177 shows and discloses a heated convection cooking oven including a reversible blower (15) mounted in a blower plenum adjacent a heat exchange tube (4) communicating with a blower header (5) for creating multiple flow patterns during a heating cycle. However, GB '177 does not disclose a plurality of heat exchange tubes wherein each has internal baffles.

Murray teaches, from the same convection heater field of endeavor as GB '177, providing a plurality of heat exchange tubes (63) wherein each has internal baffles (64) as a heat source.

In regard to claim 15, for the purpose of increasing the size and efficiency of the heat source, it would have been obvious to a person having ordinary skill in the art to modify GB '177 to include a plurality of heat exchange tubes where each has internal baffles, in view of the teaching of Murray.

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Conclusion

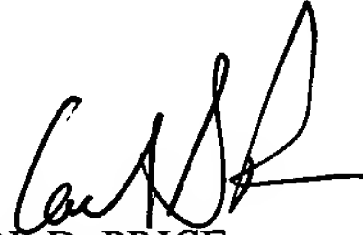
See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is 703-308-1953. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 703-308-0101. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1148/0858.


CARL D. PRICE
Primary Examiner
Art Unit 3743

cp
July 28, 2003